



Federal Communications Commission  
Washington, D.C. 20554

August 16, 2019

WXXI Public Broadcasting Council  
P.O. Box 30021  
Rochester, NY 14603

Re: Request for Extension of  
Construction Permit  
WXXI-TV, Rochester, NY  
Facility ID No. 57274  
LMS File No. 0000078423

Dear Licensee,

On July 24, 2019, WXXI Public Broadcasting Council, (WPBC), the licensee of Station WXXI-TV, Rochester, New York (WXXI or Station), filed the above captioned application seeking an extension of the Station's construction permit expiration date and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant WPBC's requests and extend WXXI's construction permit expiration date 180 days to January 29, 2020.

*Background.* Pursuant to Section 73.3700(b)(5) of the Commission's rules, a station may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337, not less than 90 days before the assigned construction permit deadline.<sup>2</sup> For Phase 4 stations, such application was due by May 6, 2019. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control.<sup>3</sup> In addition, a waiver of the application filing deadline is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.<sup>4</sup>

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<sup>1</sup> See 47 CFR § 73.3700(b)(5). All subsequent requests for additional time to construct are subject to the Commission's tolling provisions, 47 CFR § 73.3598(b).

<sup>2</sup> 47 CFR § 73.3700(b)(5)(iv).

<sup>3</sup> The *Incentive Auction R&O* provides examples of six circumstances that might justify an 180-day extension of a station's post-auction construction permit: (1) weather related delays; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; or (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services; and (6) financial hardship with sufficient supporting evidence. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

<sup>4</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

WXXI was repacked from channel 16 to channel 22 and was assigned to transition Phase 4, which has a phase completion date of August 2, 2019. The Station ceased operation on its pre-auction channel by the August 2, 2019 deadline and is operating from its auxiliary site on its post-auction channel while it completes construction of its permanent post-auction facilities.<sup>5</sup> All repacked stations for Phase 4 were issued a construction permit with an expiration date of August 2, 2019.

WPBC explains that it was notified by its tower installation crew on July 17, 2019, that the motor on the crane that would be used to install its main antenna had failed. The tower company has not provided a new installation date for the Station's antenna but indicated it would not be before the August 2, 2019 Phase 4 transition deadline. WPBC obtained a smaller crane to install an interim antenna at its auxiliary site. As a result, WPBC requests a 180-day extension to complete its full, authorized post-auction channel facilities. WPBC also requests a waiver of the 90-day construction permit extension filing deadline because it did not realize it would need an extension until after the filing deadline.

*Discussion.* Upon review of the facts and circumstances presented, we find WPBC's request to extend the construction permit deadline to construct WXXI's post-auction facility meets the requirements for a construction permit extension. WPBC has demonstrated that an extension is needed because of a last-minute failure of equipment being used to install its post-auction channel antenna. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. WXXI has ceased operation on its pre-auction channel and is operating on its post-auction channel from its auxiliary site. To the extent some viewers are unable to receive WXXI's signal while it operates from its auxiliary site, we believe that WPBC has every incentive to ensure viewers are fully informed about the Station's transition plan. Finally, we find that waiver of the 90-day construction permit extension filing deadline is in the public interest and consistent with the Commission's general waiver standard because WPBC didn't realize it needed an extension at the time of the filing deadline.<sup>6</sup>

We remind WPBC that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>7</sup> Additional expenses incurred, for instance, as a result of the grant of changes in the Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, WXXI Public Broadcasting Council's application for extension of construction permit expiration date **IS GRANTED**. The construction permit (LMS File No. 0000028426) for WXXI-TV, Rochester, New York **IS EXTENDED 180 days to January 29, 2020**. Grant of this extension does not permit WXXI to recommence operation on its pre-auction channel. We

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<sup>5</sup> See LMS File No. 0000078421.

<sup>6</sup> See *supra* note 4.

<sup>7</sup> See *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

also remind WPBC that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

A handwritten signature in black ink, appearing to read 'B a K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Melodie A. Virtue, Esq.

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<sup>8</sup> See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).